

## WATER SUPPLY AGREEMENT

**THIS WATER SUPPLY AGREEMENT** (the "Agreement"), made and entered into this 1st day of September, 2000, by and between Consumers Illinois Water Company ("CIWC"), an Illinois corporation with offices located at 1000 S. Schuyler Avenue, Kankakee, Illinois 60901, and Duke Energy Kankakee, LLC ("Duke"), a Delaware limited liability company with offices located at 5400 Westheimer Court, Houston, Texas 77056-5310 (collectively the "Parties").

### WITNESSETH:

*WHEREAS*, Duke plans to construct, equip and operate an approximately 620 megawatt electric generating facility (the "Project") in Kankakee County, Illinois, which will require significant quantities of potable water for process, cooling, fire protection and potable uses, among others; and

*WHEREAS* Duke estimates that the Project will need as much as six (6) million gallons of water per day ("mgd") for start-up, performance testing and operations, (the "Project Operations Water"); and

*WHEREAS*, CIWC is capable and willing to cause improvements described in Appendix A (the "CIWC Facilities") to be made to CIWC's water system which when constructed and completed will enable CIWC to deliver and sell to Duke up to six (6) mgd of Project Operations Water per day subject to the terms, conditions and limitations of this Agreement; and

*WHEREAS*, Duke is willing to pay for a portion of the cost of the design, construction, start-up and completion of the CIWC Facilities, subject to the terms and conditions of this Agreement; and

*WHEREAS*, Duke has competitive alternatives for water service available to it, but desires to purchase Project Operations Water from CIWC to meet the water requirements of the Project based upon the rate schedule proposed by CIWC; and

*WHEREAS*, CIWC is willing to provide Project Operations Water to Duke in accordance with the rates, terms and conditions set forth herein; and

*WHEREAS*, Duke is willing to enter into a long-term contract with CIWC, and agrees to purchase Project Operations Water exclusively from CIWC for the Project, during the term of this Agreement, subject to the terms, conditions and limitations of this Agreement

**NOW, THEREFORE**, in consideration of the premises and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

**1. Effective Date.** This Agreement shall be effective as of the date set forth in the introductory paragraph hereof ("Effective Date"); provided, however, that the continuing

effectiveness of this Agreement is subject to receipt in accordance with Section 6 hereof of approvals of the Illinois Commerce Commission ("Commission") and Board of Directors of the Duke Energy Corporation ("Duke Energy Board").

**2. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and end twenty (20) years after the effective date, unless terminated earlier in accordance with the provisions of this Agreement. Duke, in its sole discretion, may extend the Agreement for two (2) additional periods of five (5) years each following the initial term; provided that Duke provides notice thereof to CIWC no less than one year prior to the end of the initial term and first five year term, respectively. By mutual agreement, the Parties may elect to extend this Agreement for one or more additional five year terms.

**3. Obligations of CIWC.** Subject to the terms, conditions and limitations of this Agreement, CIWC's obligations hereunder include the following:

(a) On or prior to September 1, 2000, CIWC will file this Agreement with the Illinois Commerce Commission ("ICC") and take such steps as are appropriate to request ICC approval of this Agreement by December 1, 2000. CIWC will promptly provide Duke with a copy and evidence of such filing;

(b) Following the grant to CIWC of appropriate easements for a water service pipeline from State Route 50 at 6000 Road, and along 6000 Road west to the Project Site (such easements to be secured by Duke), CIWC will install a CIWC water meter or meters ("Project Operations Water Meter"), along with a water service pipeline and associated valves and equipment in order to be able to commence deliveries of Project Operations Water at the Point of Delivery (as hereinafter defined) at a rate of flow of 100 gallons per minute ("gpm") in accordance with subsection 3(f)(i). The date specified in Section 3(f)(i) for a 100 gpm rate of flow shall, at CIWC's option, be advanced by the number of days permitted by subsection 3(f) or the number of days, if any, which elapse between January 1, 2001 and the date on which Duke provides appropriate easements to CIWC in accordance with this subsection;

(c) After the Operations Commencement Date (as defined below), CIWC will, subject to the provisions of Sections 7(e) and 12, provide Project Operations Water quality that complies with all applicable federal and state drinking water requirements. CIWC will notify Duke of non-compliance with such federal or state requirements within eight (8) hours after a determination of non-compliance is made by CIWC;

(d) Subject to the provisions of Section 12 and timely receipt from Duke of each amount specified in Section 5, CIWC will complete installation, construction and appropriate initial testing of such portions of the CIWC Facilities as are necessary to provide Project Operations Water at the rates of flow specified in subsection 3(f) of this Section on the date specified in subsection 3(f) for each rate of flow, or at such later date as is established in accordance with subsection 3(f) or as may be mutually agreed upon by the Parties consistent with the provisions of Section 4(d) herein. A description of the CIWC Facilities is provided in Appendix A. At CIWC's option, each date specified in subsection 3(f) may be extended by the number of days by which any amount which Duke is required to pay by Section 5 is late; the duration of a Force Majeure as defined in Section 12; the number of days by which Duke's

approval of additional engineering costs under Section 5(a) is delayed and/or the number of days subsequent to January 15, 2001, which elapse prior to receipt of ICC approval of the Agreement or approval of the Agreement by the Duke Energy Board, whichever is later. The date of final completion of the CIWC Facilities shall be called the "Operations Commencement Date." CIWC shall provide to Duke a certification that the CIWC Facilities are complete, which certification will identify the Operations Commencement Date;

(e) Based upon Duke's projection of design flow for the Project as set forth in subsection 3(f), CIWC shall, subject to the provisions of Sections 3(d), 3(f) and 12, provide a normal delivery pressure of 40 (or greater) pounds per square inch gauge to the Point of Delivery;

(f) As of the date specified in this subsection (or as such date may be extended in accordance with the terms hereof), CIWC shall, subject to the provisions of Section 12, maintain the capacity needed to provide Project Operations Water at the Point of Delivery at a maximum gallons per minute ("gpm") rate of flow of:

- (i) 100 gpm on and after February 15, 2001;
- (ii) 350 gpm on and after October 15, 2001;
- (iii) 3,000 gpm on and after February 1, 2002;
- (iv) 4,000 gpm on and after March 1, 2002; and
- (v) 4,200 gpm on and after May 1, 2002.

After March 1, 2002, the maximum daily flow will be 6.0 mgd. Each date specified in this subsection may be advanced, at CIWC's option, by the number of days' extension permitted under the terms of Section 3(d). The date specified in subsection (f)(i) above also may be advanced in accordance with Section 3(b).

(g) After the Operations Commencement Date, CIWC will use best efforts to:  
(i) avoid interruptions of water service to the Project; (ii) schedule planned CIWC maintenance in coordination with Duke so as to minimize the impact of such interruptions on the Project; and  
(iii) restore water service if interrupted;

(h) While the CIWC Facilities are under construction, CIWC will provide monthly updates to Duke detailing the progress of design, permitting and construction of the CIWC Facilities. CIWC will periodically meet with Duke at least once per quarter to review relevant plans and documents, and more frequently upon reasonable request by Duke;

(i) CIWC will use best efforts to maintain the CIWC Facilities in good working order;

(j) CIWC will use best efforts to comply with all applicable laws, rules and regulations relating to this project;

(k) CIWC will maintain insurance with respect to its water supply facilities and the CIWC Facilities in the types and in the amounts that are customarily maintained by parties operating similar facilities, including, without limitation, commercial general liability coverage and property insurance;

(l) CIWC will repair or replace the CIWC Facilities, if there is loss, casualty or damage.

**4. *Obligations of Duke.*** Subject to the terms, conditions and limitations of this Agreement, Duke's obligations hereunder include the following:

(a) Duke will make timely payments to CIWC in accordance with Sections 5 and 7 hereof;

(b) Duke will restrict its usage of Project Operations Water to a maximum instantaneous rate of flow and daily rate of flow at or below the applicable levels specified in Section 3(f), as determined from the Project Meter, unless specific advance authorization is provided by CIWC to exceed such limit. In the event that usage of Project Operations Water exceeds a specified instantaneous or daily limit, the parties shall meet to determine the accuracy of the Project Meter and to determine if the exceedance is the result of extraordinary circumstances or normal operations, and what, if any, corrective action by Duke is necessary. In addition to exercising such other rights that CIWC may have under this Agreement, CIWC reserves the unilateral right to absolutely limit or restrict (with appropriate consideration for extraordinary flow requirements in the event of a fire at the Project) the Project's intake of Project Operations Water to the instantaneous and/or daily level specified in Section 3(f), without the need for further meetings or determinations;

(c) Except for emergency situations, Duke shall at no time increase or decrease its usage of Project Operations Water at a rate which exceeds 200 GPM per minute. The Parties shall cooperate in good faith to establish communications and operating procedures, and Duke agrees to provide CIWC with quarterly projections of estimated Project Operations Water use. Duke and CIWC agree to meet periodically during Project construction and operations to establish formal guidelines for these matters, including day-to-day communications regarding expected water demands, and to update such guidelines as necessary, on a continuing basis;

(d) During construction of the Project, Duke will provide monthly updates to CIWC, detailing the progress of construction of the Project and, if the Project experiences a definitive delay of the date when it expects to begin needing Project Operations Water, provide reasonable notice to CIWC and work with CIWC to reasonably establish an alternative date for the final completion of the CIWC Facilities consistent with the needs of the Project;

(e) During the term of this Agreement and during the period that water service is available from CIWC that meets the requirements of this Agreement or is usable in the Project's operations as reasonably determined by Duke, Duke shall use CIWC as its sole source of Project Operations Water for the Project. CIWC shall work with Duke to attempt to address Duke's increased requirements and needs for Project Water in addition to the Project Operations Water arising from planned future expansion of the Project (the "Additional Water"). Duke shall

provide CIWC with one (1) year prior written notice of any major expansion involving the addition of new generating units. Upon receipt of a sufficiently detailed request for proposal from Duke for the supply of a specified Additional Water capacity, CIWC shall have sixty (60) days in which to provide a written proposal setting forth the material terms, conditions and charges of supplying such Additional Water capacity. In the event that Duke decides, at its sole discretion, to enter into negotiations with CIWC of the terms and conditions of a potential definitive agreement (or an amendment to this Agreement), the Parties shall at their own cost engage in good faith negotiations for a period not longer than ninety (90) days. If after such ninety (90) days, the Parties have not executed a definitive agreement, Duke may seek other supplies for such Additional Water; provided, however, that this provision shall in no way be interpreted or construed as an endorsement by CIWC of Duke's right to obtain service from an alternative water supplier; and

(f) Duke will maintain insurance with respect to the Project in the types and in the amounts that are customarily maintained by parties operating similar facilities, including, without limitation, commercial general liability coverage and "all risk" property insurance.

#### ***5. Financial Obligations of Duke – CIWC Regulatory Costs and Facilities.***

(a) Within five (5) business days of the Effective Date, Duke shall deliver to CIWC the sum of \$75,000 in recognition of CIWC's regulatory costs, which shall be non-refundable to Duke and shall not be credited towards any costs or other charges due under this Agreement. Commencing on the Effective Date, Duke agrees to reimburse CIWC for its engineering costs (billed on a time and materials basis) for the CIWC Facilities, up to \$100,000. CIWC shall bill Duke monthly and the bills shall contain adequate detail to reflect the actual costs. CIWC will notify Duke when the actual engineering costs have reached \$90,000. At that time, Duke shall have the option to approve an amount of additional engineering costs of up to \$100,000 (above the first \$100,000 of such costs); provided, however, that the number of days which elapse between the date which is three days after Duke's receipt of notice from CIWC that engineering costs have reached \$90,000 and the date of Duke's approval shall be added to each date specified in subsection 3(f). In lieu of payment for engineering costs, Duke may at any time pay to CIWC the Capital Contribution (as defined below) in full. Duke may notify CIWC that engineering activities should be discontinued, and Duke will not be responsible to pay engineering costs incurred subsequent to twenty-four (24) hours after receipt of such notice. Duke will pay reimbursement of engineering costs (or the Capital Contribution) within thirty (30) days after issuance by CIWC of a bill for such costs. Amounts paid to CIWC to cover engineering costs prior to payment of the Capital Contribution are nonrefundable. At such time as the Capital Contribution described below is paid to CIWC, Duke shall receive a credit for amounts previously paid to CIWC to cover engineering costs. If not previously paid in full, Duke shall, within fifteen (15) days after approval of this Agreement by the ICC and Duke Energy Board, whichever approval is later, pay a capital contribution to CIWC (the "Capital Contribution") in the amount of \$15,725,000, which is to be applied to the cost of the design, procurement, construction and completion of the CIWC Facilities. Except as expressly provided herein, Duke shall not be entitled to a recapture and/or refund of the Capital Contribution due to a difference between the actual cost of the CIWC Facilities and the Capital Contribution or for any other reason, unless a refund is determined (in accordance with Section 19) to be an appropriate right or remedy upon an Event of Default (as defined in Section 15) by CIWC. The

Capital Contribution is due and payable even if Duke determines, in its sole discretion, not to proceed with the development of the Project; provided, however, that if such abandonment is no later than six (6) months after the date on which the Capital Contribution is paid to CIWC, Duke may terminate this Agreement and shall receive a refund of the Capital Contribution portion not incurred as of the date of termination. Neither party shall have further obligations or liabilities under this Agreement to the other Party upon termination of the Agreement by Duke under this Section.

(b) At CIWC's option, the Capital Contribution shall be paid by Duke into an interest bearing escrow account, established under such terms and conditions as are acceptable to CIWC in its sole discretion. The principal and interest of the escrow account shall be applied in such manner as CIWC shall determine.

**6. Continuing Effectiveness.** The continued effectiveness of this Agreement is contingent upon: (i) receipt on or prior to January 15, 2001 of ICC approval of the Agreement, without change to the provisions of the Agreement regarding rates paid for Project Operations Water or required rates of flow or, with regard to other provisions, a material change or imposition of one or more material conditions; and (ii) receipt on or prior to January 15, 2001 of approval of the Agreement from the Duke Energy Board; provided, however, that such dates for approval by the ICC and Duke Energy Board may be extended up to and including February 15, 2002, at the option of either party by providing written notice to the other party. If either approval required by this Section is not obtained on or prior to February 15, 2002, this Agreement shall terminate, unless the Parties mutually agree to continued effectiveness. In the event of termination under this Section, CIWC shall be entitled to retain non-refundable amounts paid by Duke under Section 5(a) hereof.

**7. Rates and Billing.** Duke shall pay to CIWC each month the amounts, specified below for Project Operations Water and CIWC's services that are related thereto. The date on which CIWC is capable of providing Project Operations Water at a rate of flow of 4,000 gpm at the Point of Delivery shall be called the "Substantial Operations Date." CIWC will advise Duke of the Substantial Operations Date in writing.

(a) Beginning on the Substantial Operations Date and thereafter until new rates are approved by the ICC or January 1, 2005, whichever is later, Duke will pay to CIWC:

- (i) a Fixed Customer Charge of \$16,667 per month; and
- (ii) for all Project Operations Water which passes through the Project Operations Water Meter(s), the amount of \$0.75 per thousand gallons; provided, however, that if the rate of usage exceeds 4,200 gpm (4,000 gpm prior to the Operations Commencement Date) the amount paid by Duke per thousand gallons for usage above 4,200 gpm (4,000 gpm prior to the Operations Commencement Date) will be \$1.25; and
- (iii) the applicable charge for private fire service for the Project as specified in CIWC's then-effective tariffs; and
- (iv) add-on taxes, surcharges, franchise and other fees imposed by CIWC, but payable by CIWC to other entities.

(b) Prior to the Substantial Operations Date, the rates and charges specified in CIWC's effective tariffs will apply to service provided to the Project.

(c) After January 1, 2005, the rates and charges paid by Duke shall be subject to change from time-to-time as approved by the ICC.

(d) Billing will be monthly, payable within thirty (30) days from the date of receipt of the bill, and for purposes of this Agreement, monthly charges shall be reduced to the nearest penny and volumes shall be rounded to the nearest 100 gallons. Billing will be based on usage as indicated by meter readings, which information shall be included in the monthly bill. Any dispute between the Parties relating to any invoices shall be settled pursuant to the Dispute Resolution Section of this Agreement. CIWC shall be entitled to invoice Duke one month in advance for payment of the Fixed Customer Charge. Any late payment by Duke shall be subject to a late payment fee as specified in CIWC's then-effective Rules, Regulations and Conditions of Service.

(e) Duke shall have no obligation to accept delivery of or pay for any Project Water available at the Point of Delivery during the period that the water does not comply with Section 3(c) or 3(f), and is not usable in the Project's operations as reasonably determined by Duke. Notwithstanding the previous sentence, if Duke takes any water delivered by CIWC not meeting the requirements of this Agreement, Duke shall be obligated to pay CIWC for such water according to the terms of this Agreement. In the event that water provided by CIWC does not comply with Section 3(c) or 3(f) and cannot be used in the Project's operation as reasonably determined by Duke, Duke may reject delivery of such non-compliant Project Operations Water. In the event that CIWC fails to supply Project Operations Water that complies with Section 3(c) or 3(f) for more than thirty (30) consecutive days, CIWC and Duke will meet to determine what, if any, corrective action should be taken by CIWC. In addition, Duke will not be required to pay the Fixed Customer Charge during such additional period (beyond 30 consecutive days) that CIWC is unable to provide water in compliance with Section 3(c) or 3(f), provided that such water is also not usable as reasonably determined by Duke in the Project's operations. If CIWC is unable to provide water in compliance with Section 3(c) or 3(f) for a period of ninety (90) consecutive days or more (and such water is also not usable in the Project's operations, as reasonably determined by Duke), such inability of CIWC shall constitute a material breach as that term is used in Section 15 which relates to default and cure.

(f) Should Duke plan a downsizing, a long-term shutdown, or undertake other actions that will materially reduce the Project's requirements for Project Operations Water, Duke shall advise CIWC as soon as such actions are known to Duke, and the Parties will cooperate in good faith to address all implications. Duke will be obligated to pay the monthly Fixed Customer Charge and all consumption charges until such arrangements are established and this Agreement is modified. In the event of a long-term shutdown of the Project, Duke shall provide CIWC with at least six (6) months notice, and shall be obligated to pay any past due or scheduled payment, along with the Fixed Customer and Consumption Charges for the period between the date of notice and the facility shutdown date, plus:

(i) A contract buy-out fee equal to \$2,000,000.

In its notice of shut-down, Duke shall state the effective date of the shut-down. Following that effective date, CIWC will have no obligation to continue service or reserve supply under the terms of this Agreement, and CIWC shall have no obligations and liabilities to Duke hereunder. The payment obligations of Duke shall be satisfied within thirty (30) days following the effective date and upon receipt by CIWC of full payment, Duke shall have no obligations or liabilities under this Agreement to CIWC.

(g) Except as otherwise expressly provided herein, the terms and conditions of CIWC's rules and regulations, as amended from time to time, that are generally applicable to all customers and specifically applicable to industrial customers, are incorporated into this Agreement by reference.

(h) Duke shall be responsible for payment of the Fixed Customer Charge commencing on the Substantial Operations Date. The Fixed Customer Charge will be pro-rated in the event that the Substantial Operations Date occurs mid-month.

**8. Metering; Risk of Loss; Reporting and Testing.** CIWC shall select, install, own, repair, replace and maintain at its sole expense the Project Operations Water Meter(s), which meter(s) will comply with the standards for measuring water promulgated by the American Water Works Association. The Project Operations Water Meter(s) will be placed on the site of the Project at a location as near as is reasonably possible to the Project's property line. Duke will provide a diagram showing the location of the Project Operations Water Meter(s) on Appendix "B." CIWC will allow Duke to obtain a split signal from the output of the Project Operations Water Meter(s) in order to transmit flow data to Duke's operations center. The unit of measure for the Project Operations Water Meter(s) shall be thousands of gallons of water.

(a) Project Operations Water shall be deemed to be delivered to Duke when it is delivered to the Project Operations Water Meter(s) (the "Point of Delivery") in accordance with the terms of this Agreement.

(b) The Project Operations Water Meter(s) shall be tested at least annually by and at the expense of CIWC to determine its accuracy. Notwithstanding the foregoing sentence, either Party may request a test during the interim between such annual meter tests, if it has good cause to believe that a Project Operations Water Meter is not registering accurately. CIWC shall promptly thereafter perform, or cause to be performed, such test. If it is determined by such interim test that the meter is registering accurately, then the Party requesting such interim test shall be responsible for paying the costs associated with such interim test, otherwise, the costs of such test shall be borne by CIWC. If a Project Operations Water Meter is found to be inaccurate by more than plus or minus two percent (2%), CIWC shall repair or replace said meter at CIWC's expense. For the period of such inaccuracy, but in no event to exceed the prior six-month period, the Parties shall attempt for not more than thirty (30) days to agree on the quantity of Project Operations Water, based on past periods of similar operation and any relevant operating data. In the event the Parties are unable to agree on such quantity of Project Operations Water, the Parties shall submit the dispute for resolution in accordance with the Dispute Resolution Section.

(c) CIWC shall provide notice of the date(s) for all such tests to be conducted in accordance with this Section sufficiently in advance thereof to enable Duke to be present at and observe such tests. In the event that a representative of Duke is not present for any such test for which CIWC has provided timely advance notice, CIWC shall have the right to proceed with such test, and the results thereof shall not be subject to dispute on the basis that Duke was not present. CIWC shall provide Duke with a copy of the results of each test.

(d) Upon notice to CIWC and with CIWC's approval, such approval not to be unreasonably withheld, Duke shall have access to the Project Operations Water Meter(s) for the purpose of conducting its own examinations and inspections.

#### ***9. Interruptions and Fluctuations in Service.***

(a) The Parties recognize that CIWC cannot guarantee that there will be no interruptions or fluctuations in the water service or the deliveries of Project Operations Water to the Point of Delivery. In the event of the occurrence of any interruption or material fluctuation, CIWC shall use its best efforts to restore water service and the delivery of Project Operations Water to the Point of Delivery as soon as reasonably possible. Interruptions might occur by reason of planned maintenance (with prior notice and approval of Duke, such approval not to be unreasonably withheld) or by reason of system emergency, failure or malfunction. In the event of system emergency, failure or malfunction, CIWC shall expeditiously provide notice to Duke of such occurrence.

(b) In the event that CIWC is required or properly authorized by a regulatory body or governmental or municipal authority to limit service to its customers as a result of drought or other similar restrictions not within its control, CIWC shall have the right to impose drought and other similar restrictions on the Project.

(c) If service is interrupted or fluctuates, CIWC will apportion available water to its customers on a pro rata basis, taking into account the typical daily usage of each customer; provided, however, that such apportionment shall not be required if another apportionment method is specified by an applicable law or rule of the ICC.

***10. Representations, Warranties and Covenants of Duke.*** Duke hereby represents and warrants to CIWC as of the date of this Agreement as follows:

(a) Duke is a limited liability company duly organized and validly existing under the laws of the State of Delaware;

(b) All limited liability company action required to authorize the execution, delivery and performance by Duke of this Agreement and the transactions contemplated hereby and thereby has been taken;

(c) This Agreement constitutes a valid, legal and binding obligation of Duke enforceable in accordance with the terms hereof or thereof except as such enforceability may be limited by applicable regulatory, bankruptcy, insolvency, reorganization, moratorium or other similar laws or by general equitable principles;

(d) The execution, delivery and performance by Duke of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a Party or by which it or its property may be bound or conflict with or contravene any law or governmental regulations applicable to Duke; and

(e) There are no actions, suits or proceedings pending or, to Duke's best knowledge, threatened, against or affecting Duke before any court, administrative body or arbitral tribunal that might materially and adversely affect the ability of Duke to perform its obligations under this Agreement;

(f) During the term of this Agreement and during the period that water service is available from CIWC that meets the requirements of this Agreement, Duke shall use CIWC as its sole source of Project Operations Water for the Project, subject to the provisions of Section 4(e); and

(g) Duke has sufficient funding in place to pay its Capital Contribution and the Fixed Customer Charges until the Project commences commercial operation.

**11. Representations, Warranties and Covenants of CIWC.** CIWC hereby represents and warrants to Duke as of the date of this Agreement as follows:

(a) CIWC is a corporation duly organized and validly existing under the laws of the State of Illinois, and has taken all necessary corporate action required to authorize the execution, delivery and performance by CIWC of this Agreement and the transactions contemplated hereby has been taken;

(b) This Agreement constitutes a valid, legal and binding obligation of CIWC enforceable in accordance with the terms hereof or thereof except as such enforceability may be limited by applicable regulatory, bankruptcy, insolvency, reorganization, moratorium or other similar laws, including, but not limited to the requirement (understood by both Parties) that this Agreement be approved by the ICC;

(c) The execution, delivery and performance by CIWC of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a Party or by which it or its property may be bound or conflict with or contravene any law or governmental regulations applicable to CIWC, except the requirement (understood by both Parties) that this Agreement be approved by the ICC; and

(d) There are no actions, suits or proceedings pending or, to CIWC's best knowledge, threatened, against or affecting CIWC before any court, administrative body or arbitral tribunal that might materially and adversely affect the ability of CIWC to perform its obligations under this Agreement.

**12. Force Majeure.**

(a) Force Majeure means any act, event or condition that is beyond the reasonable control of a Party. The payment obligations of Duke under this Agreement are not

within the definition of Force Majeure. Thus, as stated in Section 11(c) below, Force Majeure shall not excuse the payment obligations of Duke under this Agreement.

(b) CIWC shall not be responsible for the inability of CIWC, due to Force Majeure, to perform any of its obligations under this Agreement, and failure to perform such obligation due to such inability shall not be an Event of Default. A Force Majeure affecting CIWC includes, but is not limited to, the following: (i) delays or failure in obtaining necessary permits from regulatory agencies; (ii) unanticipated or unusual weather conditions; (iii) an event which is beyond CIWC's reasonable control and which is not caused by the negligence, willful misconduct or lack of due diligence of CIWC; (iv) acts of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of public enemy, war, labor strikes, blockage or insurrection, riot or civil disturbance; (v) failure of construction equipment or supporting facilities; and (vii) regulatory agency directives or delays.

(c) Duke shall not be responsible for the inability of Duke, due to Force Majeure, to perform any of its obligations, except payment obligations, under this Agreement, and failure to perform such obligations due to such inability shall not be an Event of Default. A Force Majeure affecting Duke includes, but is not limited to, the following: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence; acts of a public enemy, war, labor strikes, blockage or insurrection, riot or civil disturbance; (ii) unanticipated or unusual weather conditions; (iii) failure of electric generating equipment, supporting subsystems and/or electric transmission facilities; (iv) an event which is not caused by the negligence, willful misconduct or lack of due diligence of Duke; (v) failure of construction equipment or supporting facilities; and (vi) regulatory agency directives or delays.

(d) If either Party shall be unable to carry out its obligations that are subject to Force Majeure as a result of a Force Majeure event, this Agreement shall remain in effect, but such obligation shall be suspended for the period necessary as a result of the Force Majeure, provided that:

(i) The non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and the expected duration of the disability, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure and the disability;

(ii) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) The non-performing Party uses its best efforts to remedy its inability to perform; and

(iv) As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it gives prompt notice to the other Party.

(e) If as a result of a Force Majeure, CIWC is unable to provide water usable in the Project's operation for a period of 275 consecutive days (and such water also does not meet State or federal water quality requirements for such period), Duke may terminate this

Agreement and seek an alternative water supply, but shall not be entitled to any other relief, including, but not limited to, money damages, equitable relief or refund of any amount paid to CIWC under Section 5(a) or 7.

**13. Assignment.** This Agreement shall inure to the benefit of and shall be binding upon CIWC and Duke and their respective successors and assigns. Either Party without the other Party's consent, but upon five (5) days' prior written notice to the other Party, may assign, convey, pledge, transfer or otherwise encumber its rights and interests in this Agreement and any or all of its rights, interests and obligations arising under this Agreement to any affiliate or any responsible entity that is a successor in interest to the Party with respect to the Project or the CIWC Facilities, as applicable, or to any lender or its designee, provided that any such written notice shall: a) specifically identify the Party responsible for the obligation hereunder following such assignment or transfer; and b) specifically represent that the assignment or transfer is not being made to impede the rights of the other Party hereunder. The execution of any documents in connection with or related to the financing or re-financing of the Project and the exercise of rights, powers, privileges and remedies by the lenders thereunder shall not be held as a violation of any of the terms and conditions hereof (and is hereby expressly permitted by CIWC), or as an assumption by the lenders of the obligation of this Agreement. Any transferee or assignee of Duke's interests, rights and obligations under this Agreement shall have substantial experience in the operation of power plants similar to the Project or has entered into an operating contract with a third party who has substantial experience in the operation of power plants similar to the Project. Any transferee or assignee of CIWC's interests, rights and obligations under this Agreement shall have substantial experience in the operations of utility-grade water pipeline and delivery systems and shall be duly recognized by the ICC as having the authority to own and operate such systems in the State of Illinois. Except as provided above, no assignment of this Agreement or any Party's rights, interests or obligations hereunder may be made without the other Party's consent, which shall not be unreasonably withheld, delayed or conditioned; provided that any such transfer shall not impede the rights of the other Party hereunder.

**14. Further Assurances.**

(a) Each of the parties hereto, without additional compensation, will cooperate with the other and execute and deliver to the other such instruments and documents and take such actions as may be reasonably requested from time to time by the other party hereto as necessary to carry out, evidence and confirm the purposes of this Agreement and, provided there is not an Event of Default, to continue the effectiveness of this Agreement.

(b) At Duke's request, and following Duke's written agreement to reimburse CIWC for all reasonable fees and disbursements, CIWC shall use its best efforts to arrange for an outside law firm to provide to Duke and its lenders an opinion of counsel, subject to the customary exceptions, limitations and qualifications, certifying the due authorization, execution and delivery, and enforceability of this Agreement as against CIWC and covering such other matters as are customary and reasonable under the circumstances. As a condition to the issuance of said opinion letter, Duke shall provide, at its expense, a similar opinion letter, subject to the customary exceptions, limitations and qualifications, regarding the due authorization, execution and delivery, and enforceability of this Agreement as against Duke. In connection with the

financing or re-financing of the Project, at Duke's request, CIWC shall provide a consent to assignment to the lenders providing such financing or re-financing covering such matters as are customary for non-recourse project financing of projects similar to the Project; provided, however, that CIWC shall not be required to agree to any terms that materially and adversely affect its rights or obligations under this Agreement.

**15. Default and Cure.** If either CIWC or Duke shall materially breach any of the representations, warranties or covenants set forth in this Agreement or fail to observe or perform any of its obligations hereunder materially affecting the non-defaulting Party's rights under this Agreement, such breach or failure shall constitute an "Event of Default;" provided, however, that it shall not be an Event of Default unless and until the non-defaulting Party has given the defaulting Party written notice specifying the nature of such breach or failure and within thirty (30) days after receipt of such notice the defaulting Party fails to cure such breach or failure; provided, further, however, that if such cure cannot be reasonably completed within such 30 day period, then such period will be extended up to 90 days so long as the defaulting Party diligently takes steps to cure such breach or failure. At the end of such 90-day period or such 30-day period as applicable, the Parties shall designate senior representatives to resolve such Event of Default in accordance with Section 19. If at the conclusion of such expedited further discussions the Event of Default is not resolved to the mutual satisfaction of both Parties, then the non-defaulting Party shall be entitled to terminate this Agreement and seek appropriate remedies consistent with this Agreement and available at law and in equity; provided, however, that, if no CIWC Event of Default has occurred within 42 months after the Substantial Operations Date, Duke's rights and remedies shall not include any right or remedy unavailable to a customer similarly situated to the Project, but served under CIWC's Metered General Water Service Tariff then in effect for CIWC's Kankakee Division. Notwithstanding the above, the payment obligations of Duke shall be made on a timely basis under the terms of this Agreement, and failure to pay shall entitle CIWC to discontinue service if such failure to pay is not cured within thirty (30) days following notice of non-payment from CIWC.

**16. No Consequential Damages.** Neither Party shall, in any event, be liable to the other Party for any indirect, incidental, punitive, special or consequential damages arising out of, or related to, a breach of this Agreement, whether any such damages arise out of contract, tort, strict liability or otherwise.

**17. Waivers.** The failure of either Party to insist in any one or more instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement, shall not be construed as a general waiver of any such provision or the relinquishment of any such right, but the same shall continue and remain in full force and effect, except with respect to the particular instance or instances.

**18. Confidentiality.** In the course of the performance of their obligations under this Agreement, the Parties may share confidential information or proprietary information. The receiving Party of any non-public information from the other Party shall not disclose such information to third parties (except for such Party's lenders, advisors and attorneys, who shall agree to uphold this Section) unless required by court order or unless such information enters the public domain other than at the instigation of the receiving Party. The rights and obligations of

this Section shall survive the termination of this Agreement and remain in effect for a period of two (2) years following such termination.

**19. *Dispute Resolution.*** In the event of a dispute, disagreement or claim arising out of or concerning this Agreement, the Parties shall negotiate in good faith to resolve such dispute, disagreement or claim using senior executives with the authority to settle the dispute and who do not have direct responsibility for the administration of this Agreement. When a Party believes that there is a dispute, that party will give the other Party written notice of the dispute. Within twenty (20) days after receipt of such notice, the receiving Party shall respond to the matters set forth in the dispute. The response shall include a statement of position and a summary of the evidence and arguments supporting the position. Within ten (10) days after receiving the response to a notice of dispute, the executives of both parties shall meet at a mutually acceptable time and place to attempt to resolve the dispute. If such negotiations fail to resolve the matter to the satisfaction of both Parties within forty (40) days after notice of the dispute has been given, then either party shall be entitled to avail themselves of any rights or remedies to which they are entitled at law or in equity. Notwithstanding the foregoing, for disputes relating to the reasonableness of the rate, adequacy of service or other matters within the jurisdiction of the ICC, the dispute shall be submitted to the ICC.

**20. *Severability.*** If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

**21. *Notices.*** Any notices, except those relating to billing, required or permitted to be given hereunder shall be effective only if given in writing and delivered personally to an officer or authorized representative of the Party being notified, or if sent by registered or certified mail return receipt requested, or by facsimile, as follows:

**If to CIWC:**

Consumers Illinois Water Company  
1000 S. Schuyler Avenue  
Kankakee, Illinois 60901  
Fax: 815-935-8809

Attention: CIWC President  
With a copy to: Tom Bunosky, V.P. Kankakee/Will County Division

**If to Duke:**

Duke Energy Kankakee, LLC  
5400 Westheimer Court  
Houston, TX 77056-5310

Attention: Paul English

Any notice given hereunder shall be deemed received three (3) days after mailing, and otherwise upon delivery if delivery is made by personal delivery or facsimile.

**22. Entire Agreement.** This Agreement contains the entire Agreement between the Parties hereto respecting the subject of this Agreement. There are no other terms, conditions, promises or understandings, express or implied, concerning the activities and arrangements contemplated by this Agreement. No change, alteration, amendment, modification or waiver of any of the terms of this Agreement shall be effective unless set forth in writing and signed by the Parties.

**23. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instruments.

**24. Governing Law.** This Agreement shall be governed by the laws of the State of Illinois, including compliance with regulatory requirements.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date hereinabove first written.

ATTEST:

DUKE ENERGY KANKAKEE, LLC

By: Duke Energy Kankakee, LLC

By:

Sue Blankenship

Name: Sue Blankenship  
Title: Admin. Asst.

By:

Peter J. Ledig

Name: Peter J. Ledig  
Title: Vice President

NOC

ATTEST:

CONSUMERS ILLINOIS WATER  
COMPANY

By:

Jane Zinanni  
Name: JANE ZINANNI  
Title: SECRETARY

By:

Thomas J. Bynosky  
Name: THOMAS J. BYNOSKY  
Title: V.P. / GEN MGR

(SEAL)

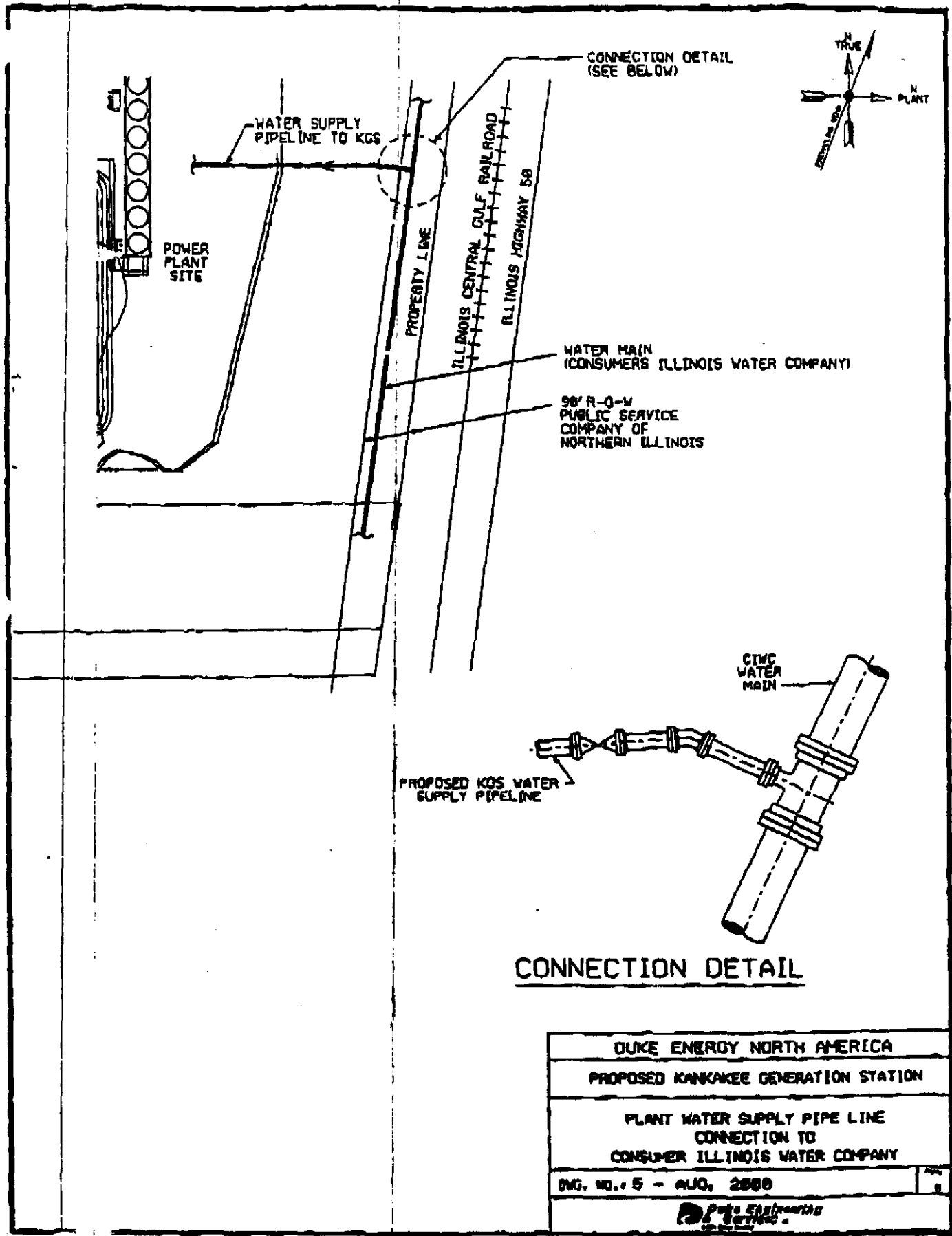
## APPENDIX A

### DESCRIPTION OF CIWC FACILITIES

CAPITAL IMPROVEMENTS NECESSARY TO PROVIDE DUKE ENERGY WITH 6.0 MGAL/DAY OF POTABLE  
WATER AT THEIR SITE OFF 6000 RD IN MANTENO TOWNSHIP:  
INCLUDING BUT NOT LIMITED TO THE FOLLOWING

<u>ITEM</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
<b>20" DUCTILE IRON WATER LINE</b>			
Cobb Blvd. to Wildwood Tank	7,000 ft.	\$140/ft	\$980,000
Wildwood Tank to New Tank at Target	22,000 ft	\$120/ft	2,640,000
New Tank to Project Site	<u>15,000 ft</u>	<u>\$90/ft</u>	<u>1,350,000</u>
SUB-TOTAL 20" MAIN	44,000 ft	\$112.95	4,970,000
WATER STORAGE TANK (STANDPIPE)	3.0 mgal	\$0.64/gal	1,920,000
WATER TREATMENT PLANT EXPANSION	5.8 mgal/day	NA	8,435,000
BOOSTER STATION	<u>4,000 gpm</u>	NA	<u>400,000</u>
 TOTAL CAPITAL COST	 NA	 NA	 \$15,725,000

# DIAGRAM SHOWING POINT OF DELIVERY



CONSUMERS ILLINOIS WATER COMPANY

ILL. C.C. NO. 5  
Original Sheet No. \_\_\_\_

Applies to: Kankakee, Bourbonnais, Portions of Bradley and other portions of Kankakee, Aroma Park, Bourbonnais and Limestone Townships in Kankakee County, Illinois

### LARGE INDUSTRIAL RATE SCHEDULE

#### AVAILABILITY

This rate is available only to Industrial Customers that enter into a twenty-year Water Supply Agreement which provides for a capital contribution equivalent to the estimated cost for construction of all plant additions needed to serve the Customer (including, but not limited to, supply plant) and which is substantially consistent with the attached Water Supply Agreement between the Company and Duke Energy Kankakee, LLC.

#### CUSTOMER CHARGE

\$16,667 per month

#### USAGE CHARGE

In addition to the foregoing Customer Charge, the Customer shall pay a usage charge for all water that passes through the water meters(s) of \$0.75 per thousand gallons; provided, however, that if the rate of usage exceeds 4,200 gpm (4,000 gpm prior to the Operations Commencement Date, as defined in the Water Supply Agreement) the amount paid by the Customer per thousand gallons for usage above 4,200 gpm (4,000 gpm prior to the Operations Commencement Date, as defined in the Water Supply Agreement) will be \$1.25.

#### OTHER CHARGES

In addition to the above charges, the Customer will pay the rate set forth in the applicable tariff for private fire service. In addition, the Customer will pay any add-on taxes, surcharges, franchise and other fees set forth in the Company's effective tariffs, but payable by the Company to entities other than the Company.

#### OTHER TERMS AND CONDITIONS

The above stated charges shall apply from the date that the Company is first able to provide the Customer with a rate of water flow of 4,000 gallons per minute ("gpm") ("Substantial Operations Date"), and shall remain in effect until the later of January 1, 2005, or the date upon which new rates and charges are approved by the Commission. Prior to the Substantial Operations Date, the applicable rates and charges specified in the Company's effective tariffs for Metered General Water Service shall apply.

Issued: \_\_\_\_\_

Effective: \_\_\_\_\_

Issued by: Terry J. Rakocy, President

1000 S. Schuyler Avenue, Kankakee, Illinois